



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

FOP/162529

PRELIMINARY RECITALS

Pursuant to a petition filed December 03, 2014, under Wis. Admin. Code §HA 3.03, to review a decision by the Winnebago County Department of Human Services in regard to FoodShare benefits (FS), a hearing was held on January 08, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the petitioner was overissued FS from September 1, 2011 through July 31, 2014.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: Jeanie Ortiz, ESS

Winnebago County Department of Human Services
220 Washington Ave.
PO Box 2187
Oshkosh, WI 54903-2187

ADMINISTRATIVE LAW JUDGE:

Kelly Cochrane
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Petitioner received FS from September 1, 2011 through July 31, 2014 as a household of 3.

3. On June 27, 2014 the agency received an anonymous tip about unreported income in the petitioner's home. The agency thereafter began a fraud investigation.
4. Petitioner did not report all income in the household from September 1, 2011 through July 31, 2014.
5. On October 24, 2014 the agency issued a notice of decision to petitioner stating that the petitioner was overissued FS from September 1, 2011 through February 29, 2012 in the amount of \$1482 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 2.
6. On October 24, 2014 the agency issued a notice of decision to petitioner stating that the petitioner was overissued FS from March 1, 2012 through August 31, 2012 in the amount of \$1485 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 2.
7. On October 24, 2014 the agency issued a notice of decision to petitioner stating that the petitioner was overissued FS from September 1, 2012 through February 28, 2013 in the amount of \$483 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 2.
8. On October 24, 2014 the agency issued a notice of decision to petitioner stating that the petitioner was overissued FS from March 1, 2013 through August 31, 2013 in the amount of \$1524 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 2.
9. On October 24, 2014 the agency issued a notice of decision to petitioner stating that the petitioner was overissued FS from September 1, 2013 through February 28, 2014 in the amount of \$1168 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 2.
10. On October 24, 2014 the agency issued a notice of decision to petitioner stating that the petitioner was overissued FS from March 1, 2014 through July 31, 2014 in the amount of \$275 (claim # [REDACTED]) for failure to provide accurate information for benefits due to client error. Exhibit 2.

DISCUSSION

The Department is required to recover all FS overpayments. An overpayment occurs when an FS household receives more FS than it is entitled to receive. 7 C.F.R. §273.18(c). The federal FS regulations provide that the agency shall establish a claim against an FS household that was overpaid, even if the overpayment was caused by agency error. 7 C.F.R. §273.18(b)(3). All adult members of an FS household are liable for an overpayment. 7 C.F.R. §273.18(a)(4)(i); *FS Handbook*, §7.3.1.2, available online at <http://www.emhandbooks.wisconsin.gov/fsh/fsh.htm>.

In a Fair Hearing concerning the propriety of an overpayment determination, the agency has the burden of proof to establish that the action taken by the agency was proper given the facts of the case. The petitioner must then rebut the county agency's case and establish facts sufficient to overcome the agency's evidence of correct action. To determine an overpayment amount, the agency must determine the correct amount of FS that the household should have received and subtract the amount that the household actually received. 7 C.F.R. §273.18(c)(1)(ii).

Petitioner did not contest any of the amounts of income budgeted, or the substance of the overpayments calculated. Petitioner's ex-girlfriend also testified to the income, as did the investigators for the agency. There was no dispute that the ex-girlfriend was in the home during the time period in question, and that her

VA income would have put them over the FS limit to be eligible for FS. The petitioner's only question at hearing was whether or not his ex-girlfriend would also be liable for the overpayment.

With regard to who is liable for the overpayment, the FS Handbook, §7.3.1.2 reads as follows:

All adult or emancipated minors that were included in the household or should have been included in the household at the time the overpayment occurred are liable for the repayment of the overissuance of FS benefits. If a liable member moves to another household, responsibility of the overpayment is maintained and follows that individual to the new household.

Liability for a FoodShare overpayment is not split evenly among liable parties. Liable individuals are responsible for 100% of the overpayment until the full debt is repaid in full.

Thus, as confirmed by the federal regulations above and as interpreted for the FS Handbook, if the ex-girlfriend was an adult member of the FS household at the time the overpayment occurred, she is also held liable for that overpayment.

Based on the evidence presented, I must find that the petitioner was overissued FS from September 1, 2011 through July 31, 2014.

CONCLUSIONS OF LAW

The petitioner was overissued FS from September 1, 2011 through July 31, 2014.

THEREFORE, it is

ORDERED

The petition for review herein is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 23rd day of January, 2015

\sKelly Cochrane
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 23, 2015.

Winnebago County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability